

No. 9(1)82-6Lab/8676.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of the Executive Engineer, Tubewell Division No. 1, Minor Irrigation Tubewell Corporation, Karnal.

IN THE COURT OF SHRI HARI SINGH KAUSHAK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 68 of 1979
(Fbd.-21 of 1982)

between

SHRI DHANI RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF
THE EXECUTIVE ENGINEER, TUBE-WELL DIVISION NO. I, MINOR
IRRIGATION TUBEWELL CORPORATION, KARNAL

Shri M. L. Chandna for the workman.

Shri W. C. Sharma for the respondent.

AWARD

This reference No. 68 of 1980 (21-Fbd of 1982) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—vide his order No. ID/KNL/74-78/12538, dated 17th March, 1979 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Dhani Ram, workman and the respondent management of The Executive Engineer, Tubewell Division No. I, Minor Irrigation Tubewell Corporation, Karnal. The term of the reference was :—

Whether the termination of service of Shri Dhani Ram was justified and in order ? If not, to what relief is he entitled ?

The Presiding Officer, Labour Court, Rohtak issued notices to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand, notice and claim statement and rejoinder is that the workman was the employee of the H.S.M.I.T.C. Ltd., and working as T-Mate-cum-Operator in Division No. I, Karnal. The respondent terminated his services from 1st December, 1976. The Executive Engineer gave a chargesheet to the workman which was replied by him then the Executive Engineer gave 10 days notice on 21st November, 1976 which was received by the applicant on 22nd November, 1976. The management took it an act of mis-conduct against the applicant but no enquiry was held in the matter. The appeal was filed before the Supdt. Engineer, Karnal against the termination of the workman but no action was taken in the appeal. On 16th September, 1976 the Assistant Foreman Shri Inder Kumar asked the applicant to bring wire from the Sectional Officer, Shri Bansi Lal Arora, the Heavy Duty Foreman who was the immediate boss of the applicant and under whose supervision and control the applicant was at work, ordered the claimant not to leave the site without his permission. Shri Inder Kumar was also working under him. The Asstt. Foreman took it ill and tried to pick up a quarrel with the claimant without any reason and on the next day he came to blow with the workman and abused and insulted the applicant in the presence of the staff. The termination was illegal, void and unconstitutional and against the principles of natural justice. The mis-conduct charged by the management was illegal. It is case of victimization on behalf of the respondent management. It is clearly a violation of section 25-F of the Industrial Disputes Act, 1947 by the management. The respondent did not give any retrenchment compensation and no permission for retrenchment was taken from the Government so the workman is entitled for his reinstatement with full back wages and continuity of service.

According to written statement the case of the respondent is that the workman was working as T-Mate under the Xen, Tubewell Division No. I, Karnal and he was terminated on 1st December, 1976 on account of serious misconduct on his part. He was charge-sheeted and given full opportunity to vindicate his position about his disobediences, mis-behaviour and slapping his superior officers during the course of his duties. The charges were proved against him and the workman also admitted the same in the course of reply that he was guilty of slapping Asstt. Foreman. He gave the reply as under "As regards, the giving of slaps it is submitted that on 17th September, 1976 it was Inder Kumar, Asstt. Foreman who had abused me in the presence of staff. In retaliation I also exchanged some slaps with him. For a person holding such a responsible post it is not expected to act in this way." It is also admitted that ten days notice on the workman was served as alleged in compliance with the requirement of the service contract. The action in terminating the services of the workman was taken on the basis of enquiries made and confession of the workman himself as stated in para 2. The workman did not sent a representation to the Superintending Engineer, Tubewell Circle No. 2, Karnal but later on refused to cooperate in another detailed enquiry into the matter as suggested in the representation itself. It is admitted that Shri Inder Kumar Asstt. Foreman asked the workman to bring wire urgently from the Sectional Officer which direction he failed to carry out. It is an after

thought on the part of the workman to suggest that he was asked by another officer Shri Bansi Lal not to leave the site. The workman evaded to carry out the direction of his supervisor and when he was asked on 17th September, 1976 for the reason for not doing the needful he started mis-behaving and ultimately went to the extent of slapping Shri Inder Kumar, his supervisor as admitted by the workman himself. So the termination was legal and correct as the termination was made on account of mis-behaviour and assault of superior officer as punishment. No retrenchment compensation payable under the provision of Industrial Disputes Act. So the reference may be rejected.

On the pleadings of the parties, following issues were framed :—

- (1) Whether the enquiry held by the management for terminating the services of the workman is legal and in order and full opportunity to the workman was given or not ? If not, to what effect ?
- (2) As per reference ?

The Labour Court, Rohtak recorded the evidence of the respondent and partial evidence of the workman and after that the file was transferred to me,—vide Secretary to Government, Haryana order No. 1(63) 81-1Lab, dated 7th January, 1982.

My findings on the issues are as under :—

Issue No. 1.—The representative of the respondent argued on this issue that as stated by Shri R. N. Tiwari, S.D.O. New Augmentation Division, Karnal as MW-2 that the enquiry against the workman was conducted by Shri O. P. Ahuja which is Exhibit MW-2/2 and which is correct. The workman was given all opportunity in the enquiry. After giving the notice of enquiry to the workman which the workman admit in his claim statement. The enquiry officer received a complaint from Shri Inder Kumar, Asstt. Foreman which is Exhibit MW-1/1. After this complaint the S.D.O. sent the letter to the Executive Engineer about this complaint. The Executive Engineer ordered for the charge-sheet and the enquiry which is Exhibit MW-2/2. After this order the charge-sheet was prepared and issued to the workman which is Exhibit MW-2/1 along with the charge-sheet containing 3 pages and the enquiry officer conducted the enquiry and gave his report to the Executive Engineer. During the enquiry workman of the claimant stated before the enquiry officer that the claimant slapped Shri Inder Kumar in their presence. The writing of the workman is Exhibit M-X/1 and M-X/2. He further argued that it is very surprising that the workman called Shri Ran Singh as his witness who has deposed as WW-1 before this court and stated that the document Exhibit MX-2 bears his signature and he gave this statement before the enquiry officer that the claimant slapped Shri Inder Kumar. Shri Inder Kumar, complainant has come as MW-1 who has stated in his statement that the claimant was working under him as T-Mate-cum-Operator on 16th September, 1979. he asked the claimant to bring the wire from the Sectional Officer concerned and on the 11nd day on 17th September, 1976 when he asked about the wire the claimant stated that it was not his duty so he did not bring them and when the witness asked to another work the claimant abused the Asstt. Foreman, scuffle with him and gave slaps on his face in the presence of so many staff working in the office. After this incident the witness stated that he made the complaint to the S.D.O. which is MW-1/1. On his complaint the Executive Engineer ordered for chargesheet and the preliminary enquiry was conducted by the Sectional Officer and enquiry was done by the S.D.O. In the enquiry the workman was present and other member of the staff were present at the time of incident, were present who gave in writing about this incident and the workman also admitted this fact about the enquiry officer and the enquiry officer submitted his report according to the fact of the case and on the findings of the enquiry officer the workman was terminated. The respondent's representative further argued that in the demand notice the workman has stated nothing about this incident but in his claim statement he has stated that there was an incident and the Asstt. Foreman asked him to bring the wire from the Sectional Officer and as the immediate boss Shri Bansi Lal Arora Heavy Duty Foreman has ordered him not to leave his site without his permission so he did not went to bring the wire and on that there was a quarrel between the Asstt. Foreman and the workman on 17th September, 1976. The respondent issued the chargesheet which was replied by him but after examining the evidence of the respondent and one of the workman WW-1 Shri Ran Singh who has not stated in his favour changed the story of his case of this incident which he cannot do under CPC rule 7 order VI which is as under :—

“No pleadings shall, except by way of amendment raise any new ground of claim or contain any allegation of fact in consistent with previous pleading of the party pleadings the same.”

So instead of proving this case by evidence, on the raise of averments made in the claim statement, the workman changed horses in the mid stream and set up all together a new case during the course of his evidence by saying that the dispute between the workman and Shri Inder Kumar occurred because the workman refused to undergo family planning operation on the asking of Asstt. Foreman. The workman was estopped from setting up a case on which he never based his claim statement, on which the respondent never filed their pleadings and which pleas was never taken into consideration while framing of issues. It is a clear proposition of law that the parties cannot go beyond their respective pleadings. The workman in his statement alleged that there was a dispute between him and Shri Inder Kumar on the issue of NUS BANDI operation at the canal, which is against the pleadings of the workman contained in the Demand Notice claim

statement and rejoinder and constantly during the cross-examination of the respondent witness. The workman has further stated in his cross-examination that he does not remember whether he was asked by Shri Inder Kumar MW-1 to bring wire and whether he was charge-sheeted. The claimant has further stated that he was asked by Shri Bansi Lal Arora not to leave the side to bring wire but did not call him as witness in the court. The workman has stated in his cross-examination that no notice was given to him. Contrary confessing the claim statement he has further deposed that he did not apply to the Superintending Engineer for constituting further enquiry which is again contrary to the claim statement. The witness in reply to separate question that the matter of NUS BANDI was never mentioned in his pleadings. The workman further went to the extent of disowning the demand notice which was received in the court along with the reference which was shown to him. He has stated in his cross-examination that he cannot say that the demand notice, dated 2nd December, 1976 received with the order of reference was correct or incorrect. The claimant gave the application before this court to give an opportunity to one more witness which was allowed and the workman called Shri Sunehari as WW-4. He has also narrated the story of NUS BANDI. He did not utter a word in support of the case originally set up by the workman. The witness WW-4 has admitted in his statement that there was a quarrel of two in his presence and both were quarrelling and giving slaps to each other. It shows that the contention of the respondent is supported by this witness of the workman. It is clear from the evidence of the workman that the claimant gave slaps to Shri Inder Kumar, Asstt. Foreman in the presence of other staff working under him. The witness WW-4 has denied the story of wire bringing by the workman. When the claimant admits the fact of directing of the Asstt. Foreman to bring the wire and his witness deny the same, the witness cannot be believed. So the proper enquiry was constituted by the S.D.O. after the order of charge-sheet and the enquiry which are on the file and the facts are admitted by the witness of the workman. The statement of the workman cannot be believed about the NAS BANDI. He tried to change his case which cannot be believed at this stage as he has not taken it earlier, even before the Enquiry Officer and there is not a single word in his cross-examination and on the witness of the respondent for NAS BANDI. So the proper enquiry was held against the workman and rightly terminated the services of the workman on the charge of misbehaviour, disobedience and slapping the superior officer.

The representative of the workman argued that as stated by the workman he joined his services in the year 1973 as T-Mate-cum-Operator and there was a quarrel on 17th September, 1976 with Shri Inder Kumar, Asstt. Foreman at the canal for NUS BANDI as the Asstt. Foreman wanted him to get operated in the Family Planning. The Union President and Shri Sunehara, Sarpanch was present at that time. The workman was unmarried person and he does not want to be operated in the Family Planning as he has no issue. The Asstt. Foreman made a false report against him and on that the charge-sheet was issued to him which was replied by him. But no enquiry was conducted on the basis of the charges. He further argued that the case of the workman was corroborated and supported by the Ex-Union President Shri Ram Narain as WW-2 and Surpunch Shri Sunehara as WW-4. These persons cannot be disbelieved as they are well respected persons.

After hearing the arguments of both the parties, and going through the file, I am of the view that fair and proper enquiry was made by the respondent against the workman as the workman made no allegation or brought any such unfair thing in my notice. Moreover, the statement of the workman and his witness cannot be believed as they are inconsistent with the statement of claim and statement. The workman has never stated in his claim statement or rejoinder about NUS BANDI incident but he has brought the witness to corroborate the story of NUS BANDI which is not the case of the workman. So I hold the enquiry fair and proper and the issue is decided in favour of the respondent and against the workman.

Issue No. 2.—After holding the enquiry fair and proper against the workman, the termination made by the respondent on the basis of the findings of the enquiry was justified and no such person can be tolerated in the service who insulted the superior officer in presence of the staff which is admitted by the workman and on the charges of disobedience and slapping the superior officer the termination is justified and there is nothing wrong in the order of termination and the workman is not entitled for any relief.

This be read in answer to this reference.

Dated the 3rd August, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1784, dated 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.